DERMOT S. McGLINCHEY

IBLA 78-632 Decided December 6, 1978

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer ES 18244.

Affirmed.

1. Estoppel--Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

2. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Dermot S. McGlinchey, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated July 31, 1978, by the Eastern States Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer ES 18244 because of a deficiency greater than 10 percent in the first year's rental. 1/

1/ Rental requirements are stated in 43 CFR 3103.3-1:

"Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease."

Appellant filed his offer on December 9, 1977, for 194 acres and submitted $97 apparently computed at 50 cents per acre. On January 5, 1977, 43 CFR 3103.3-2 had been changed to increase the rental to $1 per acre or fraction thereof on all noncompetitive leases issued after February 1, 1977 (43 FR 1032). The correct amount for appellant's offer would have been $194.

In support of his appeal, appellant states that he relied on oral representation by BLM personnel that the rental was 50 cents per acre. Appellant further states that on August 10, 1978, he submitted an amended offer with the correct rental. Appellant contends that the amended offer should be considered as relating back to the time of the original filing, or in the alternative should be considered as a new application.

[1, 2] As has been held in previous Board decisions, an applicant's reliance on erroneous representations by BLM personnel cannot confer on him any right not authorized by law. WZL Investment Corp., 36 IBLA 355 (1978); Charles M. Brady, 33 IBLA 375 (1978); Belton E. Hall, 33 IBLA 349 (1978). Appellant's offer was filed nearly a year after the new rental rate became effective. Appellant must be presumed to have had knowledge of the change. Verner F. Sorenson, 32 IBLA 341 (1977).

In Charles House, 33 IBLA 308, 310 (1978), the Board, in discussing a similar contention of misadvice from a BLM employee, stated:

> In their statement of reasons, Appellants suggest that the Government should be estopped from enforcing this separate application rule because an employee of BLM suggested that they file their application in this manner, and because at no time did BLM advise the of this rule, despite constant contact with BLM during the application procedure. This suggestion is without merit. A representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule, and the Department is not bound by such a representation. The incorrect or unauthorized acts of government employees may not override valid rules. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917); Parker v. United States, 461 F.2d 806 (Ct. Cls. 1972); Administrative Appeal of Joe McComas, 5 IBIA 125, 83 I.D. 227 (1976); Marathon Oil Company, 16 IBLA 298, 81 I.D. 447 (1974); Mark Systems, Inc., 5 IBLA 257 (1972).

Appellant's amended or new offer, filed after the decision appealed from was issued, can establish priority no sooner than the date of its filing. See 43 CFR 3103.3-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman
Administrative Judge

We concur:

_____
Douglas E. Henriques
Administrative Judge

_____
Newton Frishberg
Administrative Judge